

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GERALD L POLZIN,

Plaintiff,

v.

Case No. 11-C-714

MICHAEL BAENEN,

Defendant.

ORDER GRANTING LEAVE TO AMEND ANSWER

Respondent has filed a motion seeking leave to amend his answer. Respondent seeks to amend his answer by including some of Petitioner's response to the no-merit report filed on his state appeal. In addition, Respondent seeks to assert an affirmative defense of procedural default based on Petitioner's alleged failure to fairly present his claim of a *Brady* violation to the state courts. The other proposed changes in the Answer appear more stylistic than substantive. Petitioner opposes the motion, claiming that he has already submitted his motion for summary judgment on the Petition and, further, that too much time has elapsed and he would therefore suffer prejudice.

The motion will be granted. This is a case seeking federal habeas relief under 28 U.S.C. § 2254. The record before this court consists of the various pleadings and the record in the state court proceedings. Thus, there is no new discovery required in order to address the new defense raised by Respondent. Petitioner has suffered no prejudice since he will be able to fully address

any new arguments that the amendment gives rise to. Moreover, given the extent of the record in the case and the lengthy pleadings Petitioner has submitted, the request is not unreasonable.

Accordingly, the motion for leave to amend the answer is granted. The Clerk is directed to detach the amended response and file it in this matter forthwith. Respondent's motion for an extension of time to file his brief in opposition to the petition is also granted. Respondent will have 7 days from the date of this order in which to file his brief in opposition to the petition.

So Ordered this 23nd day of March, 2012.

s/ William C. Griesbach

William C. Griesbach
United States District Judge